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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re ATM FEE ANTITRUST LITIGATION

Master File No. C 04-2676 CRB

PAMELA BRENNAN, TERRY CRAYTON, and  
DARLA MARTINEZ, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

vs.

CONCORD EFS, INC., FIRST DATA CORP.,  
BANK OF AMERICA, N.A., JPMORGAN  
CHASE BANK, N.A., BANK ONE, N.A.,  
CITIBANK, N.A., CITIBANK (WEST), FSB,  
SUNTRUST BANKS, INC., WACHOVIA  
CORPORATION, WELLS FARGO BANK, N.A.,  
SERVUS FINANCIAL CORP.,

Defendants,

**CLASS ACTION**

**THIRD AMENDED COMPLAINT  
FOR DAMAGES AND  
EQUITABLE RELIEF**

**DEMAND FOR JURY TRIAL**

**FILED UNDER SEAL**

**DOCUMENT SUBMITTED UNDER SEAL**  
**(REDACTED)**

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1 Plaintiffs Pamela Brennan and Darla Martinez, by and through their undersigned  
 2 attorneys, bring this action on behalf of themselves and all other similarly situated members of  
 3 the proposed California classes seeking damages and injunctive relief under the United States  
 4 antitrust laws against Defendants Concord EFS, Inc., First Data Corp., Bank of America, N.A.,  
 5 JPMorgan Chase Bank, N.A., Citibank, N.A., Citibank (West), FSB, SunTrust Banks, Inc.,  
 6 Wachovia Corp., Wells Fargo Bank, N.A., and Servus Financial Corp., and demand a trial by  
 7 jury.

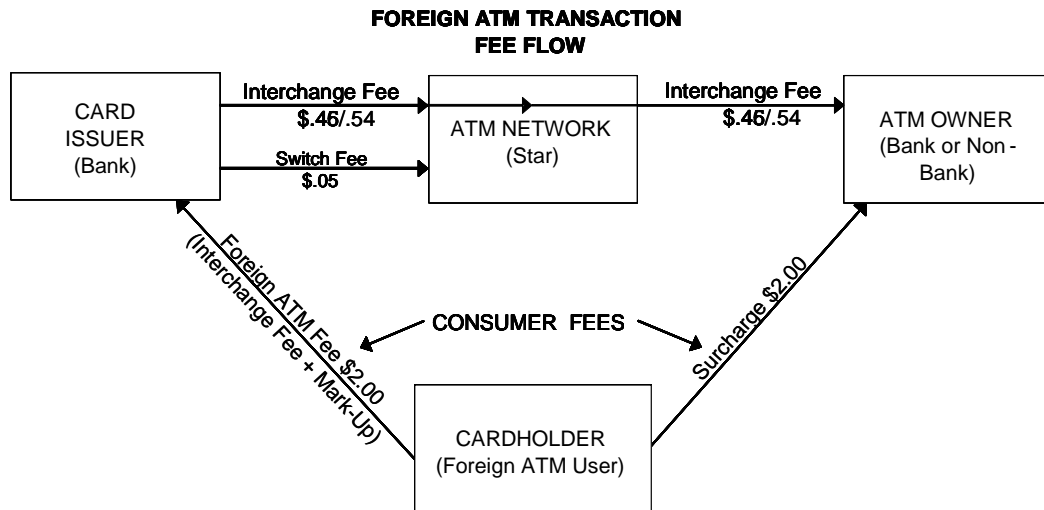
8 Plaintiff Terry Crayton, by and through his undersigned attorneys, brings this  
 9 action on behalf of himself and all other similarly situated members of the proposed non-  
 10 California classes seeking damages and injunctive relief under the United States antitrust laws  
 11 against all Defendants and demands a trial by jury.

12 For their Complaint against Defendants, Plaintiffs allege the following:

13 1. Since the inception of the Star ATM Network (“Star”), Defendants have  
 14 fixed the interchange fee (“Interchange Fee”) paid to ATM Owners on Automated Teller Machine  
 15 (“ATM”) transactions over the network. Bank Defendants mark up the fixed Interchange Fee,  
 16 and charge it to most of their cardholders as the Foreign ATM Fee.

17 2. The original purported purpose for the fixed Interchange Fee was to  
 18 compensate ATM Owners for the additional cost of providing cash to other Banks’ customers.  
 19 However, fixed Interchange Fees have been unnecessary for that purpose, or for the efficient  
 20 operation of an ATM Network, since at least 1996, when Star eliminated its rules that effectively  
 21 prohibited “Surcharges.” By virtue of Surcharging, ATM Owners have been able to unilaterally  
 22 recover their additional costs, and to set the amount of compensation they receive from  
 23 cardholders when they withdraw cash from their ATMs. Since the wide-spread implementation  
 24 of Surcharges, consumers have been paying twice for the same transaction to withdraw their own  
 25 funds: Surcharges paid to ATM owners and Foreign ATM Fees to their own Banks, the latter of  
 26 which are artificially inflated by fixed – and unnecessary – Interchange Fees.

27 3. Figure A below depicts a typical transaction involving a cardholder’s cash  
 28 withdrawal from an ATM not owned by his/her Bank:

**FIGURE A**

Amounts of fees shown are representative examples.

4. Defendants' fixing of Star's Interchange Fee is an unreasonable restraint of trade in violation of Section 1 of the Sherman Act.

## **I. JURISDICTION**

5. Plaintiffs bring this antitrust class action under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, to recover for injuries they have suffered as a result of Defendants' continuing violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Plaintiffs seek treble damages, injunctive relief, and the costs of suit, including reasonable attorneys' fees, for themselves and for the members of the classes that they seek to represent. This Court has jurisdiction over this case under 28 U.S.C. §§ 1331 and 1337(a), and 15 U.S.C. §§ 15 and 26.

## **II. VENUE**

6. Venue is proper in this judicial district under 15 U.S.C. §§ 22 and 28 U.S.C. §§ 1391(b) and (c) because each of the Defendants resides, or is licensed to do business or is doing business, or is found or transacts business, in this district, or the claims arose in this district.

1 **III. PLAINTIFFS**

2 7. Plaintiff Pamela Brennan is a resident of San Francisco, California.  
3 Ms. Brennan has paid “Foreign ATM Fees,” as that term is defined herein, to one or more of the  
4 Defendants named herein during the Relevant Period.

5 8. Plaintiff Terry Crayton is a resident of Wichita, Kansas. Mr. Crayton has  
6 paid “Foreign ATM Fees,” as that term is defined herein, to one or more of the Defendants named  
7 herein during the Relevant Period.

8 9. Plaintiff Darla Martinez is a resident of Alta Loma, California.  
9 Ms. Martinez has paid “Foreign ATM Fees,” as that term is defined herein, to one or more of the  
10 Defendants named herein during the Relevant Period.

11 **IV. DEFENDANTS**

12 **A. Concord**

13 10. Defendant Concord EFS, Inc. (“Concord”) is a Delaware corporation with  
14 its principal place of business in Memphis, Tennessee. In 2001, Concord acquired Star Systems,  
15 Inc., at which time Concord succeeded to and assumed all rights and obligations of Star. Star  
16 Systems, Inc. was itself the result of a 1999 merger between Honor Technologies, Inc. (“Honor”) and  
17 Star Systems, Inc.

18 11. Prior to acquiring Star Systems, Inc., Concord had purchased two other  
19 ATM networks, MAC in 1999 and Cash Station in 2000. Throughout the Relevant Period, an  
20 ATM Network operated under the name Star. Star is the largest ATM Network in the United  
21 States. Prior to February 1, 2001, officers of the other Defendants and their co-conspirators  
22 served on Star’s Board of Directors. Concord presently is a wholly-owned subsidiary of  
23 Defendant First Data Corporation.

24 **B. First Data**

25 12. Defendant First Data Corporation (“First Data”) is a Delaware corporation  
26 with its principal place of business in Greenwood, Colorado. In February 2004, First Data  
27 acquired Concord. Plaintiffs are informed and believe that First Data has succeeded to the  
28 liability for the acts, omissions and unlawful conduct of Concord and Star. Under the terms of a

1 merger agreement dated April 1, 2003, Monaco Subsidiary Corporation (“Monaco”), a wholly-  
2 owned subsidiary of First Data, merged with and into Concord, and Concord, as the surviving  
3 corporation, succeeded to and assumed all the rights and obligations of Monaco and Concord.

4 13. Pursuant to the merger, First Data acquired Concord through an exchange  
5 of stock. Concord shareholders received 0.365 of a share of First Data common stock for every  
6 share of Concord common stock. Following the consummation of the merger, First Data  
7 reorganized its business segments and fully integrated the businesses and assets of Concord,  
8 including Star, into the newly modified First Data segments. As a result of this transaction, First  
9 Data now owns and operates Star. Concord no longer owns or operates Star.

10 14. In connection with the merger, Concord’s sales forces and product lines, as  
11 well as several operating centers and administrative departments, were completely integrated into  
12 First Data. Richard Kiphart, the Chairman of Concord, also became a director of First Data and  
13 Ronald Congemi, the president and founder of Star, became the CEO of First Data Debit  
14 Services, the business segment controlling Star. On March 31, 2005, Mr. Congemi became First  
15 Data’s senior vice president for strategic industry relations. Plaintiffs also are informed and  
16 believe that Star acts as the agent of First Data. In press releases, on its website and in other  
17 public filings, First Data has held itself out as the owner and operator of Star. First Data itself  
18 also enters into contracts, including contracts with a number of other Defendants, regarding  
19 participation in Star. First Data now reports income from Star. Before the merger, Concord  
20 reported assets that included \$500 million in cash. After the merger, Concord ceased reporting  
21 this amount in its balance statements. At all relevant times, First Data exercised such dominion  
22 and control over Concord and Star that it is liable for the acts of Concord and Star.

23 15. The transaction between Concord and First Data constitutes a *de facto*  
24 merger or consolidation. There is a continuation of the enterprise of Concord, including  
25 continuity of management, personnel, physical location, assets, and operation of Star. There is a  
26 continuity of shareholders. On information and belief, Concord has ceased operations, liquidated  
27 and/or dissolved. First Data has assumed the obligations of Concord necessary for uninterrupted  
28 continuation of Star and its other ongoing business operations.

1           16.     The transaction between Concord and First Data also constitutes a  
 2 continuation of the business of Concord, including Star. Concord and First Data have continued  
 3 to produce the same products and services, including those of Star. First Data and Concord have  
 4 continued to employ Star's employees and supervisory personnel and maintained Star's physical  
 5 location and other operations. Concord and First Data have retained the Star name. They have  
 6 continued Star's general business operations. First Data holds itself out as a continuation of  
 7 Concord.

8           **C.     Bank of America**

9           17.     Defendant Bank of America, N.A. ("Bank of America") is a national  
 10 banking association incorporated in North Carolina and with its principal place of business in  
 11 Charlotte, North Carolina. It is a wholly-owned subsidiary of NB Holdings Corporation, which  
 12 in turn is wholly-owned by Bank of America Corporation. During the Relevant Period, Bank of  
 13 America, N.A. has offered deposit accounts and other banking services, including ATMs, to the  
 14 general public.

15           18.     Bank of America Corporation represented to the Federal Reserve Board  
 16 that it (along with certain other Defendants named herein) would conduct Star's activities, and  
 17 would own more than five percent of Star's voting shares. Prior to February 1, 2001, Bank of  
 18 America was entitled to appoint outside directors to Star's Board of Directors. During the  
 19 Relevant Period, Bank of America has been a member of Star.

20           **D.     Chase**

21           19.     Defendant JPMorgan Chase Bank, N.A., a national banking association  
 22 with its principal place of business in Columbus, Ohio, is a wholly-owned subsidiary of  
 23 JPMorgan Chase & Co. JPMorgan Chase Bank, N.A. is an interstate bank that has offered  
 24 deposit accounts and other banking services to the general public.

25           20.     Defendant Bank One, N.A. was a Delaware corporation with its principal  
 26 place of business in Chicago, Illinois. In 2001, Bank One, N.A. acquired Bank One of Arizona,  
 27 N.A. ("Bank One Arizona"), which was also a wholly-owned subsidiary of Bank One  
 28 Corporation, and entitled to appoint outside directors to Star's Board of Directors prior to

February 1, 2001. In 2004, Bank One Corporation and Bank One, N.A. merged into Chase. Plaintiffs are informed and believe that Chase succeeded to the liability or assumed the liability for the acts, omissions and unlawful conduct of Bank One, N.A. which in turn did the same with respect to Bank One Arizona. During the Relevant Period, Bank One N.A. and Bank One of Arizona, N.A., offered deposit accounts and other banking services, including ATMs, to the general public.

21. Defendants JPMorgan Chase Bank, N.A. and Bank One, N.A. are collectively referred to as "Chase." During the Relevant Period, Chase has been a member of Star.

**E. Citibank**

22. Defendant Citibank, N.A. is a bank with its principal place of business in New York, New York, and is a subsidiary of Citigroup, Inc. Citibank, N.A., through Defendant Citibank (West), FSB, had a representative on Star's Board prior to February 1, 2001. During the Relevant Period Citibank, N.A., has offered deposit accounts and other banking services, including ATMs, to the general public. Citibank, N.A., also succeeded to the liabilities of California Federal Bank, another member of Star.

23. During the Relevant Period Defendant Citibank (West), FSB was a federal savings bank with its principal place of business in San Francisco, California. In 2002, Citibank (West), FSB acquired California Federal Bank, FSB, a Star member entitled to appoint outside directors to Star's Board of Directors prior to February 1, 2001. On October 1, 2006, Citibank (West), FSB became a national bank named West, National Association ("West"). Immediately following the conversion, West was merged with and into Citibank, N.A. with Citibank, N.A. constituting the surviving institution. Plaintiffs are informed and believe that Citibank, N.A. succeeded to the liability or assumed the liability for the acts, omissions and unlawful conduct of Citibank (West), FSB. During the Relevant Period, Citibank (West), FSB offered deposit accounts and other banking services, including ATMs, to the general public.



24. Defendants Citibank N.A. and Citibank (West), FSB are collectively referred to herein as “Citibank.” During the Relevant Period, Citibank has been a member of Star.

**F. Suntrust**

25. Defendant SunTrust Banks, Inc. (“SunTrust”) is a Georgia corporation with its principal place of business in Atlanta, Georgia. During the Relevant Period, SunTrust was a Star member and represented to the Federal Reserve Board that it (along with certain other Defendants named herein) would conduct Star’s activities, and would own more than five percent of its voting shares. Crestar Financial Corporation (a subsidiary that subsequently merged into SunTrust) was entitled to appoint outside directors to Star’s Board of Directors prior to February 1, 2001. The Crestar appointee represented the interests of SunTrust on Star’s Board. During the Relevant Period, SunTrust has offered deposit accounts and other banking services, including ATMs, to the general public.

**G. Wells Fargo/Wachovia**

26. Defendant Wachovia Corporation (“New Wachovia”) is a North Carolina corporation, with its principal place of business in Charlotte, North Carolina. In 2001, another entity, also named Wachovia Corporation (“Old Wachovia”), merged into First Union Corporation (“First Union”), which subsequently renamed itself Wachovia Corporation (“New Wachovia”). During the Relevant Period, Old Wachovia and New Wachovia offered deposit accounts and other banking services, including ATMs, to the general public. Both First Union and Old Wachovia represented to the Federal Reserve Board that they (along with certain other Defendants) would conduct Star’s activities, and would own more than five percent of its voting shares. Prior to February 1, 2001, both First Union and Old Wachovia were entitled to appoint outside directors to Star’s Board of Directors. On December 31, 2008, New Wachovia merged with Defendant Wells Fargo & Co. Wells Fargo & Co. emerged as the surviving corporation and succeeded to all of the businesses, assets and obligations of Old Wachovia and New Wachovia.

27. Defendant Wells Fargo Bank, N.A. (“Wells Fargo Bank”), a federally chartered bank with its principal place of business in San Francisco, California, is a wholly-

owned subsidiary of Wells Fargo & Co. During the Relevant Period Wells Fargo Bank offered deposit accounts and other banking services, including ATMs, to the general public. Prior to February 1, 2001, Wells Fargo Bank, N.A. was entitled to appoint outside directors to Star's Board of Directors.

28. Defendant Servus Financial Corporation ("Servus Financial"), a corporation with its principal place of business in Herndon, VA, is a wholly-owned subsidiary of Wells Fargo & Co. First Security Corporation, which in 2003 merged into Servus Financial Corporation, was entitled to appoint outside directors to Star's Board of Directors.

29. Defendants New Wachovia, Wells Fargo Bank and Servus Financial are collectively referred to herein as "Wells Fargo." During the Relevant Period, Wells Fargo has been a Star member.

## **V. AGENTS AND CO-CONSPIRATORS**

30. Each Defendant committed the acts alleged in this Complaint through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of the Defendant's business or affairs.

31. Defendants' unlawful and intentional concerted actions have severely damaged and will continue to damage Plaintiffs and the members of the classes they seek to represent.

32. Various other firms or corporations not named Defendants in this lawsuit, including but not limited to other Banks whose representatives have served on Star's Board of Directors prior to February 1, 2001, have participated as co-conspirators with Defendants in the offenses charged herein and have performed acts and made statements in furtherance thereof.

## **VI. DEFINITIONS**

33. "Automated Teller Machine" or "ATM" is a device consisting principally of a computer, cash dispensing equipment, a card reader, and security that enable the electronic processing or dispensing of banking services such as cash withdrawals, balance inquiries, account transfers and deposits.

1                   34.     “ATM Card” means a card, generally made of plastic with a data-encoded  
2 magnetic strip, capable of initiating transactions at ATMs.

3                   35.     “ATM Network” means a group of multiple ATMs and multiple Banks  
4 which are interconnected by electronic or telecommunications means, to one or more computers,  
5 processors or switches for the purpose of providing ATM services to the customers of member  
6 Banks. Only Foreign ATM Transactions are routed over ATM Networks.

7                   36.     “ATM Owner” means an entity that owns and operates one or more ATMs.  
8 An ATM Owner may be a Bank or a non-Bank, such as a retailer or other operating company.

9                   37.     “ATM Switch Fee” means a fee paid to an ATM Network to compensate  
10 the network for processing Foreign ATM Transactions.

11                  38.     “Bank” means a financial institution in which customers deposit and/or  
12 keep funds. “Banks” include savings banks, thrifts, credit unions and all other financial  
13 institutions.

14                  39.     “Bank Defendants” are Defendants Bank of America, Chase, Citibank,  
15 SunTrust, and Wells Fargo. They hold themselves out as horizontal competitors, for purposes  
16 including the provision of deposit accounts and other banking services, such as ATMs, to the  
17 general public and in regulatory filings with various governmental entities.

18                  40.     “Cardholder” is a holder of an ATM Card issued by a Bank.

19                  41.     “Cash Withdrawal” means a transaction in which a Cardholder withdraws  
20 funds from his or her deposit account via an ATM. Cash Withdrawals comprise the vast majority  
21 of ATM transactions.

22                  42.     “Foreign ATM” means an ATM owned by an ATM Owner other than the  
23 Cardholder’s Bank.

24                  43.     “Foreign ATM Fee” means a transaction fee imposed by a Bank on its own  
25 customer for a Cash Withdrawal at a Foreign ATM.

26                  44.     “Foreign ATM Transaction” means a Cash Withdrawal in which a  
27 Cardholder uses an ATM owned by an entity other than his or her own Bank.

1                   45.     “Interchange Fee” means a fee paid to the ATM Owner for a Foreign ATM  
2 Transaction.

3                   46.     “Issuer” means a Bank that issues ATM Cards to Cardholders.

4                   47.     “On-Us ATM Transaction” means a Cash Withdrawal at an ATM owned  
5 by the Cardholder’s Bank. On-Us ATM Transactions are not routed over Star.

6                   48.     “Relevant Period” means the time period beginning July 2, 2000. The  
7 Relevant Period has not yet ended, as Defendants’ actions described herein are ongoing.

8                   49.     “Star” means the Star ATM Network, currently owned by First Data  
9 Corporation.

10                  50.     “Surcharge” means a fee imposed by the ATM Owner on a Cardholder for  
11 a Cash Withdrawal at a Foreign ATM. Banks sometimes refer to it as a “convenience fee.”

## 12       **VII. CLASS ACTION ALLEGATIONS**

13                  51.     Plaintiffs Pamela Brennan and Darla Martinez bring this action under  
14 Federal Rules of Civil Procedure 23(a), (b)(2) and (b)(3) on behalf of themselves and the two  
15 California classes.

16                       a.     The first California class, “the California Damages Class,” seeks  
17 only damages and is defined as:

18                               All persons, firms, corporations, partnerships, or other business entities,  
19 who (1) opened a deposit account with a Bank Defendant at a branch office  
20 in California and (2) paid a Foreign ATM Fee directly to one of the Bank  
21 Defendants, or any subsidiary or affiliate thereof, during the Relevant  
Period. This Class does not include the Defendants, their parents,  
subsidiaries and affiliates, other co-conspirators, governmental entities, the  
judge in this action, or the judge’s immediate family members.

22                       b.     the second California class, “the California Injunctive Relief  
23 Class,” seeks only injunctive relief and is defined as:

24                               All persons, firms, corporations, partnerships, or other business entities,  
25 who (1) opened a deposit account with a Bank Defendant at a branch office  
26 in California and (2) currently have an ATM card linked to a deposit  
27 account with a Bank Defendant. This Class does not include the  
28 Defendants, their parents, subsidiaries and affiliates, other co-conspirators,  
governmental entities, the judge in this action, or the judge’s immediate  
family members

52. Plaintiff Terry Crayton brings this action under Federal Rules of Civil Procedure 23(a), (b)(2) and (b)(3) on behalf of himself and the two non-California classes.

a. The first non-California class, “the Non-California Damages Class,” seeks only damages and is defined as:

All persons, firms, corporations, partnerships, or other business entities, who (1) opened a deposit account with a Bank Defendant at a branch office in the United States outside of California and (2) paid a Foreign ATM Fee directly to one of the Bank Defendants, or any subsidiary or affiliate thereof, during the Relevant Period. This Class does not include the Defendants, their parents, subsidiaries and affiliates, other co-conspirators, governmental entities, the judge in this action, or the judge’s immediate family members.

b. The second non-California class, “the Non-California Injunctive Relief Class,” seeks only injunctive relief and is defined as:

All persons, firms, corporations, partnerships, or other business entities, who (1) opened a deposit account with a Bank Defendant at a branch office in the United States outside of California and (2) currently have an ATM card linked to a deposit account with a Bank Defendant. This Class does not include the Defendants, their parents, subsidiaries and affiliates, other co-conspirators, governmental entities, the judge in this action, or the judge’s immediate family members.

53. Plaintiffs do not know the exact size of the Classes, since such information is in the exclusive control of Defendants. However, due to the nature of the trade and commerce involved, class members are so numerous and geographically dispersed as to render joinder of all class members impracticable.

54. There are questions of law or fact common to the Classes, including, but not limited to the following:

a. Whether Defendants engaged in a contract, combination and conspiracy to fix, raise, maintain, or stabilize Interchange Fees in California and throughout the United States;

b. Whether Defendants collectively adopted and enforced an operating rule mandating payment of Star’s Interchange Fees, whether Star members agreed to abide by this rule, and all other Star operating rules as a condition of membership of Star;

1 c. Whether Defendants' contract, combination and conspiracy to fix,  
2 raise, maintain or stabilize Interchange Fees is an unreasonable restraint of trade;

3 d. The relevant product and geographic market for assessing  
4 Defendants' conduct;

5 e. Whether Defendants' conduct caused Foreign ATM Fees to be set  
6 at artificially high and supra-competitive levels;

7 f. Whether Defendants' conduct injured Plaintiffs and the other  
8 members of the Classes; and

9 g. For the Injunctive Relief Classes, whether Plaintiffs and other  
10 members of the Classes are entitled to injunctive relief.

11 55. These and other questions of law and fact are common to the Classes and  
12 predominate over any questions affecting only individual class members.

13 56. Plaintiffs' claims are typical of the claims brought on behalf of the Classes  
14 because they paid Foreign ATM Fees directly to one or more of the Defendants.

15 57. Plaintiffs will represent the interests of the Classes fairly and adequately in  
16 that Plaintiffs are members of the Classes they seek to represent and their interests do not conflict  
17 with those of any other members of the Classes. Furthermore, Plaintiffs have retained competent  
18 counsel experienced in antitrust and other class action litigation.

19 58. The prosecution of separate actions by individual members of the Classes  
20 would create a risk of inconsistent or varying adjudications, establishing incompatible standards  
21 of conduct for Defendants.

22 59. Defendants have acted, and refused to act, on grounds generally applicable  
23 to the Classes, thereby making appropriate final injunctive relief with respect to the Classes as a  
24 whole.

25 60. Class certification is superior to alternative methods for the fair and  
26 efficient adjudication of this controversy. Prosecution as a class action will avoid repetitious  
27 litigation.  
28

**COUNT I**  
**(Violation of Section One of the Sherman Act, 15 U.S.C. § 1)**  
**(Against All Defendants)**

61. Plaintiffs incorporate by reference and reallege each and every allegation contained in paragraphs 1 through 60 above as though fully set forth herein.

**A. Interstate Trade And Commerce**

62. During the Relevant Period, Defendants and their co-conspirators engaged in various business activities, including activities related to Foreign ATM Transactions, throughout the United States. Star is the largest ATM Network in the country, processing approximately 69 million Foreign ATM Transactions per month throughout the United States.

63. At all relevant times, Defendants have operated in interstate commerce, and their practices at issue in this litigation have affected interstate commerce.

**B. Development Of ATM Networks**

64. Banks introduced ATMs in the 1970s to dispense cash on bank premises and give customers greater access to their deposit accounts while cutting costs, especially on human tellers. Subsequently, Banks introduced off-premises ATMs.

65. Banks later established so-called “regional” shared ATM Networks, such as Star, Honor, MAC, Cash Network, NYCE and Pulse, in various states and regions throughout the country. Banks did so to provide customers with greater access to ATMs via Foreign ATM Transactions. Through the end of the 1980s, over 150 regional shared ATM Networks were established.

66. The geographic scope of the regional networks was generally circumscribed by the geographic area in which their member Banks operated. To provide their customers with nationwide access to ATMs, certain Banks established, and many others joined, the Plus and CIRRUS ATM Networks, which were national in scope. ATM transactions were routed through the national networks when cardholders’ transactions occurred outside the geographic area serviced by their respective regional networks. For that reason, the national networks were deemed the ATM Network of last resort.

67. An ATM Network, such as Star, can have several thousand members or participants, including both Banks and non-Bank ATM Owners. Banks may own ATMs and issue ATM Cards while non-Banks may own ATMs but do not issue ATM Cards. Membership in the network is typically open only to Banks. Non-Bank ATM Owners are typically not network members and have virtually no role in establishing network policies, but are bound by those policies.

68. Banks participate in ATM Networks, such as Star, so that the Banks' customers are able to use ATMs at many more locations than one Bank alone could deploy.

69. As a result of industry consolidation, there are now approximately 25 ATM Networks with the market dominated by a few networks, of which Star is the largest.

### C. Star

#### 1. Star's Origins

70. In approximately 1984, twelve California Banks established Star. Star provided ATM Network services, including the ability to make Cash Withdrawals at Foreign ATMs, in several western states, including California and Arizona. Each of those Banks owned shares of Star stock, but membership was open to all Banks. Upon information and belief, shares in Star were issued to additional member Banks.

71. Star grew exponentially in membership size, transaction volume and geographic coverage primarily through mergers with other regional ATM Networks, and not as a result of unique product development or superior competitive practices.

#### 2. Star Growth Through Consolidations and Mergers

72. Star's first significant merger was consummated on or around February 1, 1999, when Star merged with the Honor ATM Network. As result of that merger, Star's geographic area of operation expanded to include the southeastern United States, including Florida and Georgia. In addition, Star significantly increased its numbers of member Banks and Cardholders.

73. Just two years later, on February 1, 2001, Concord – the owner of the MAC and Cash Station ATM Networks – acquired Star by purchasing all of the member Banks'



ownership interests in Star. As a result of that acquisition, Star's geographic area of operation expanded significantly to include the mid-Atlantic and mid-western United States. In addition, Star again increased its numbers of Banks and Cardholders.

74. Star now comprises approximately 306,000 ATMs and over 5,400 members nationwide. Star processes far more Foreign ATM Transactions than any other ATM Network.

**D. Star Is Not and Has Never Been an Economically Integrated Joint Venture**

75. Star has never been an economically integrated joint venture:

- a. at all relevant times, Star's member Banks have competed with each other to offer deposit accounts to consumers, and in several other relevant contexts as well;
- b. Star's member Banks have never transferred any of their ATM-related assets to Star;
- c. Star's member Banks have never pooled their revenues or expenses associated with Star Foreign ATM Transactions, as either ATM Card Issuers or ATM Owners. They have never divided their profits and losses generated by Foreign ATM Transactions and ATM deployment;
- d. significantly, since Concord's acquisition of Star, Star's member Banks have never shared the risk of loss, as well as the opportunities to profit, from Star's business; and
- e. at all relevant times, Star's member Banks have not owed each other a fiduciary duty to act for each others' economic benefit.

76. Moreover, Star's fixed Interchange Fee is not a fee for the service that Star sells. Star sells ATM Network processing services (authorization, clearance and settlement) to its members and participants. Star does not receive *any* portion of the Interchange Fee. It has merely, in collusion with the Bank Defendants, established and maintained an illegal rule requiring that its co-conspirators pay *each other* Interchange Fees. Star is paid only Switch Fees for its services, by Cardholders' Banks. Those fees are legal, and entirely separate and apart from Interchange Fees. Setting Interchange Fees is not a core activity of Star.

1           **E.     Star's Fixed ATM Interchange Fees Serve No Pro-Competitive Purpose**

2           77.     Defendants' fixed Interchange Fees are not necessary to accomplish any  
3     procompetitive benefit of Star. Even if some procompetitive benefit were achieved through fixed  
4     Interchange Fees, that benefit is outweighed by the anticompetitive effects of fixed Interchange  
5     Fees.

6           78.     Interchange Fees were, and are, fixed by Star and its members. The  
7     original alleged purpose of Interchange Fees was to compensate ATM Owners for the costs of  
8     providing cash to other Banks' customers. Some ATM Networks even retained third parties, such  
9     as accounting firms, to attempt to determine the amount of those costs.

10          79.     Cardholders' Banks initially considered ATMs to be primarily a source of  
11     costs savings, and fixed Interchange Fees to be a lesser cost of achieving those savings.  
12     However, Banks soon began to charge their Cardholders for Interchange Fees, by marking up  
13     Interchange Fees and renaming them "Foreign ATM Fees." They applied Foreign ATM Fees to  
14     Cash Withdrawals at ATMs other than their own. Cardholders could withdraw their own money  
15     without charge only at their own Banks' ATMs (On-Us ATM Transaction).

16          80.     Foreign ATM Fees were, and are, imposed by every Bank Defendant Star  
17     member, and Foreign ATM Fees were and are markups of Interchange Fees.

18          81.     Until 1996, fixed Interchange Fees and Foreign ATM Fees were the sole  
19     sources of revenue on Foreign ATM Transactions for Bank Issuers and ATM Owners. That is  
20     because ATM Owners were effectively prohibited from Surcharging for Cash Withdrawals as a  
21     result of rules imposed by the networks.

22          82.     The networks, including Star, dropped their long-standing bans against  
23     Surcharges in April 1996. This effectively permitted Surcharging on Foreign ATM Transactions  
24     over any network, including Star.

25          83.     As a result, ATM Owners quickly imposed Surcharges. For example, in  
26     January 1997, Bank of America and Wells Fargo imposed Surcharges of \$1.50 per transaction on  
27     non-customers at their combined 12,000-plus ATMs. That month, Bank Network News reported  
28     that ATM Owners were imposing Surcharges at 35 percent of ATMs nationwide. Since then,

1 Surcharge rates have risen dramatically. Between April 1999 and October 2008, the percentage  
2 of ATM Owners imposing surcharges increased from 95 to 99 percent, and the average Surcharge  
3 amount rose from \$1.37 to \$1.97. Today all Bank Defendants impose Surcharges at their ATMs  
4 and their average charge exceeds two dollars, with Bank of America and Citibank charging three  
5 dollars.

6 84. With the advent of Surcharges, ATM Owners have been able to  
7 independently set the level of their compensation, and not only recover the costs of Foreign ATM  
8 Transactions, but earn profits as well. Unlike Interchange Fees, these Surcharges are set  
9 independently and competitively, rather than collusively fixed.

10 85. Because fixed Interchange Fees were no longer necessary to compensate  
11 ATM owners as of 1997, the Plus ATM Network (owned by Visa) proposed eliminating them  
12 that year. Similarly, the Pulse ATM Network considered eliminating Interchange Fees and in  
13 2001, the president and CEO of Pulse suggested that Interchange Fees “may be an anachronism.”

14 86. In approximately 1999, a senior Star employee also proposed eliminating  
15 Star’s fixed Interchange Fee to Star’s founder and President Ron Congemi.

16 87. Other industry participants, including the Bank Defendants, have suggested  
17 that fixed Interchange Fees are unnecessary. For example, in 1999, Wells Fargo considered  
18 several alternatives to the then-existing fee structure in the ATM industry, including eliminating  
19 network-fixed Interchange Fees and Foreign ATM Fees.

20 88. Yet no ATM Network has eliminated Interchange Fees because Banks do  
21 not want to lose the significant revenue that they earn through Foreign ATM Fees, which would  
22 be significantly lower or non-existent absent Interchange Fees. In fact, Tony Hayes, a senior  
23 associate of a Bank consulting firm that serves several networks including Star, NYCE, and  
24 Pulse, was quoted in the March 26, 1998 edition of Bank Network News as saying, “No one is  
25 talking seriously about getting rid of interchange. Why endanger both incomes?”

26 89. Mandatory fixed Interchange Fees are unnecessary to the efficient  
27 operation of Star. Interchange Fees neither enhance nor promote competition between ATM  
28

1 Networks, or within Star's membership. Neither Star nor any other ATM Network uses  
2 Interchange Fees as a competitive tool.

3 90. Mandatory fixed Interchange Fees are not necessary to the efficient  
4 operation of an ATM Network. Defendant First Data's Australian subsidiary Cashcard ATM  
5 Network is in the process of eliminating Interchange Fees. In that network, ATM Owners will  
6 recoup their costs and earn profits on Foreign ATM Transactions via Surcharges only.

7 91. In December 2007, the European Commission held that MasterCard's  
8 Interchange Fees for credit and debit card transactions were illegal under the European Union's  
9 equivalent to the Sherman Act, finding that MasterCard's payment card network could operate  
10 efficiently without them. *See* Commission Decision (E.C.) COMP/34/579 of 19 December 2007

11 **F. Star's Illegal Fixed Interchange Fees**

12 92. Beginning before the Relevant Period, Defendants and their co-  
13 conspirators engaged in a continuing contract, combination and conspiracy to restrain trade and  
14 commerce unreasonably in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The  
15 unlawful contract, combination and conspiracy continue to the present.

16 93. The contract, combination and conspiracy in violation of Section 1 of the  
17 Sherman Act consists of a continuing agreement among the Defendants and their co-conspirators  
18 to fix, raise, maintain, or stabilize at artificially high levels the Interchange Fees that the Bank  
19 Defendants charge for Foreign ATM Transactions. Those transactions have resulted in the  
20 payment of artificially-inflated Foreign ATM Fees directly from Cardholders to Defendants and  
21 their co-conspirators.

22 94. Bank Defendants, acting through Star's Board of Directors, collectively  
23 adopted and enforced Star's Operating Rules mandating payment of Interchange Fees. All Star  
24 members agree to abide by this rule, and all other Star Operating Rules, as a condition of  
25 membership in Star.

26 95. From Star's inception through January 31, 2001, Star and its Board of  
27 Directors conspired to fix, through a concert of action, Star's Interchange Fees. Pursuant to this  
28 illegal agreement, each member Bank agreed to pay the fixed Interchange Fees.

1           96. For example, on October 27, 1989, the Board of Directors, including  
2 representatives of Citibank and Bank of America, fixed Star's Interchange Fees at \$0.45 for "on-  
3 premise" transactions and \$0.55 for "off-premise" transactions.

4           97. The Board repeatedly re-affirmed and extended its price-fixing, including  
5 in the instances when Star acquired new networks. For example, according to notes from an  
6 April 8, 1999, Executive Committee Meeting of H&S Holding Company, Star's President and  
7 CEO, Ronald Congemi, advised the Committee that "interchange fee structure was a matter  
8 reserved for decision by the full [Star] board."

9           98. At a meeting on February 9-10, 2000, the Board, comprised of employees  
10 and agents of the Banks that controlled Star, voted again to fix Interchange Fees: at \$0.45 for on-  
11 premise transactions and \$0.55 for off-premise transactions, effective December 1, 2000. That  
12 vote raised Interchange Fees for transactions at ATMs connected to the recently-acquired Honor  
13 network, which had previously been set at \$0.40 for both on- and off-premises transactions.

14           99. At that time, each of the Bank Defendants had representatives on Star's  
15 Board. Each of the Bank Defendants agreed to the price fix and agreed to abide by it.

16           100. 

17  
18  
19  
20  
21  
22           In other words, even after the Star-  
23 Concord merger, the Bank Defendants effectively controlled Star/Concord's setting of  
24 Interchange Fees.

25           101. Indeed, in consideration of the Star-Concord merger, the Bank Defendants  
26 and their principals, and their co-conspirators received approximately ten percent of the voting  
27 stock in Concord.  
28

1                   102. Defendants have perpetuated and maintained the price-fixing mechanism  
2 that has been in place since Star's inception.

3                   103. Until February 1, 2001, Defendants agreed that they would pay Interchange  
4 Fees at the price fixed by the Board of Directors. Since February 1, 2001, that same price-fixing  
5 agreement effectively remains in place, as Star's members have continued to fix Star's  
6 Interchange Fees. For example, the Star Advisory Board, consisting of member Banks, not only  
7 "recommended, reviewed and approved" "revised fees" for the 2004 fee schedule, the Advisory  
8 Board also determined that these "revised fees" should be delayed due to industry conditions.  
9 Moreover, Star's former President Ron Congemi solicited the input of Star's Advisory Board  
10 members – consisting of Star's member Banks – in analyzing and considering changes to  
11 Interchange Fees and other network fees, rules (including Operating Rules), and procedures.

12                   104. At all relevant times, Bank Defendants knew that Star contemplated that  
13 each card-issuing member Bank would agree to charge and to pay the same fixed Interchange  
14 Fees. Banks Defendants also knew that Star invited them to agree to charge the same fixed  
15 Interchange Fees.

16                   105. At all relevant times, Bank Defendants have agreed to pay, and do pay,  
17 fixed Interchange Fees as required by Star's Operating Rules. Moreover, at all relevant times, the  
18 Bank Defendants knew that the other members of Star agreed to pay the fixed fees, and each, with  
19 that knowledge, continued to agree to participate and did participate in the price-fixing.

20                   106. At all relevant times, the Defendants continued to participate in the  
21 conspiracy and reap the benefits of supracompetitive Interchange Fees. At no time did any of the  
22 Defendants take the steps necessary to withdraw publicly from the conspiracy or otherwise  
23 abandon it. To the contrary, Interchange Fee levels, as fixed by Defendants before the  
24 acquisition, remained the same until 2003, when they were modified by a mere penny. Since  
25 then, their levels have not changed.

26                   107. At all relevant times, Star's fixed Interchange Fees have been set in stone:  
27  
28

1 they are immutable and non-negotiable. They are not “default” fees. No Star member has ever  
 2 paid an Interchange Fee for even a single transaction that deviated from the fixed Interchange  
 3 Fees set forth in Star’s schedule of fees.

4 108. The aforesaid contract, combination and conspiracy had the following  
 5 anticompetitive effects, among others:

- 6 a. Foreign ATM Fees have been maintained at artificially high levels;
- 7 b. ATM Cardholders who have used Foreign ATMs have been  
 8 deprived of the benefits of free and open competition;
- 9 c. Price competition has been unreasonably restrained and suppressed;  
 10 and
- 11 d. The Defendants’ conduct has injured the Plaintiffs in their business  
 12 and property.

13 109. The Defendants’ conduct, undertaken for the purpose of fixing prices and  
 14 restraining competition, unreasonably restrains trade in violation of Section One of the Sherman  
 15 Act, 15 U.S.C. § 1.

16 **G. Harm To Competition**

17 110. Despite being unnecessary to compensate ATM Owners, or for the efficient  
 18 operation of Star, Defendants have continued to impose fixed Interchange Fees because the Bank  
 19 Defendants mark them up to set Foreign ATM Fees, which generate substantial revenues for  
 20 Bank Defendants.

21 111. The imposition of a mandatory fixed Interchange Fee directly impacts the  
 22 price that consumer Cardholders pay for Foreign ATM Transactions. If Defendants had not  
 23 collusively imposed and fixed Interchange Fees, free and open competition in the marketplace  
 24 would have resulted in significant reductions to, or the elimination of, Foreign ATM Fees, and the  
 25 price consumers paid to get their own money would have been substantially reduced.

26 112. Fixed Interchange Fees have not incentivized or promoted the deployment  
 27 of additional ATMs since 1996. Rather, according to industry experts, Surcharging, and not  
 28 Interchange Fees, facilitated the quantum leap in ATM deployment. In fact, Surcharging led to

the deployment of an additional 250,000 ATMs. Dove Consulting's 2006 ATM Deployer Study, sponsored in part by Star, shows that "ATM deployment growth exploded" as a result of Surcharging.

#### **H. Relevant Product And Geographic Markets**

##### **1. Provision of Foreign ATM Transactions Routed Over ATM Networks**

113. One relevant product market for assessing Defendants' collusive conduct is the provision of Foreign ATM transactions routed over ATM networks. The Defendants should compete in this market, and but for their agreement they would compete by lowering or eliminating Interchange Fees and Foreign ATM Fees. The agreement on Interchange fees has artificially increased, maintained, or stabilized Star's Interchange Fee, resulting in the Bank Defendants' Foreign ATM Fees being set at supra-competitive levels. Defendants are liable for this conduct regardless of whether they possess "market power" in the market for the provision of Foreign ATM transactions routed over ATM networks. Nevertheless, they do have market power, as evidenced by their ability to raise prices above competitive levels.

##### **2. Provision of Foreign ATM Transactions Routed Over Star**

114. Another relevant product market for assessing Defendants' collusive conduct is the provision of Foreign ATM Transactions routed over Star.

115. The Bank Defendants, which are some of the largest Banks in the United States, compete directly with each other to offer deposit accounts to consumers. A substantial feature of such accounts is consumers' ability to access and withdraw their own funds upon demand. Upon opening deposit accounts with Bank Defendants, consumers are given ATM cards, which are linked to those accounts, to use at Star-branded ATMs to withdraw funds. Upon information and belief, consumers cannot obtain ATM Cards without first opening deposit accounts.

116. Because ATM Cards are issued primarily for withdrawing funds from or depositing funds into deposit accounts, the relevant product market for Foreign ATM Transactions routed over the Star Network would not exist without the primary market for deposit



1 accounts. The relevant product market is wholly derivative from and dependent on the market for  
2 deposit accounts.

3 117. ATM Cards allow consumers to withdraw their own funds at ATMs other  
4 than those owned by the Bank that issued the card, *i.e.*, to initiate Foreign ATM Transactions.  
5 However, the Bank Defendants, and not consumers, determine that those transactions will be  
6 routed over Star. The Bank Defendants and Star fix Interchange Fees that consumers  
7 unknowingly pay for Foreign ATM Transactions routed over Star. When Interchange Fees are  
8 increased, Foreign ATM Fees are increased as well.

9 118. When consumers withdraw their own funds from Foreign ATMs, they  
10 cannot choose: (1) the ATM Network over which those transactions are routed or (2) to avoid  
11 paying or limiting fixed Interchange Fees associated with the transactions. Consumers are locked  
12 into both using Star and paying fixed Interchange Fees for those transactions.

13 119. Consumers withdrawing their own funds through Foreign ATM  
14 Transactions routed over Star have no adequate substitute when they seek to withdraw cash from  
15 their deposit accounts. Foreign ATM Transactions over Star provide consumers with access to  
16 cash at all times, regardless of where those consumers are located. Consumers' ability to  
17 withdraw cash at a particular Bank Defendant's branches is limited both by the Bank's business  
18 hours and branch locations. Similarly, consumers' ability to withdraw cash at ATMs owned by a  
19 particular Bank Defendant is circumscribed by the geographic locations where the Bank's ATMs  
20 are deployed. Although consumers can get cash back on PIN debit transactions at many retail  
21 establishments, those transactions require a purchase and are limited by the establishment's  
22 business hours and rules which limit the amount of cash back they may give to a consumer for  
23 such transactions.

24 120. To avoid paying Star's supra-competitive Interchange Fees, consumers  
25 must switch their deposit accounts to banks which do not route their foreign ATM transactions  
26 over Star. Switching banks, however, does not guarantee that consumers will avoid paying Star's  
27 fixed Interchange Fee. Due to market imperfections, consumers cannot determine the ATM  
28 network over which their foreign ATM transactions will be routed upon opening new deposit

1 accounts. Banks, including Bank Defendants, generally do not disclose this information to  
 2 consumers and it is generally neither disclosed on Banks' web sites nor in literature describing  
 3 various deposit accounts. Moreover, many consumers are unaware of a Banks' Foreign ATM  
 4 Fees, again due to market imperfections. Accordingly, when consumers switch their deposit  
 5 account from one Bank Defendant to another, or to one of the approximately 5,400 other member  
 6 Banks of Star, they may unknowingly continue to pay Star's fixed Interchange Fees. In fact, in  
 7 some geographic areas Star is dominant to the point that consumers would be hard-pressed to  
 8 avoid paying Star's fixed Interchange Fee.

9 121. Consumers are economically locked into their deposit accounts because the  
 10 costs of switching to a new bank exceed the amounts they pay in overcharges on the Foreign  
 11 ATM Fees. These switching costs are both monetary and non-monetary.

12 122. Monetary switching costs and impediments include, but are not limited to:  
 13 (1) maintenance fees that Banks charge when consumers do not maintain minimum amounts in  
 14 their deposit accounts, which Banks may waive for consumers who have multiple accounts within  
 15 the same Bank; (2) forfeiture of "reward points" given to consumers for having linked credit or  
 16 debit accounts; (3) fees to obtain checks for new accounts; (4) funds that must remain in existing  
 17 accounts to ensure that outstanding checks and recurring automated payments clear; (5) funds that  
 18 must remain in both existing and new accounts to satisfy minimum deposit amount requirements  
 19 necessary to avoid monthly account fees; and (6) funds tied up in a new account placed on hold,  
 20 up to one business day for amounts up to \$5,000 and up to eight business days for amounts over  
 21 \$5,000. *See* 12 U.S.C. § 4003.

22 123. Non-monetary switching costs include, but are not limited to, the cost of  
 23 time expended to: (1) investigate options and open new accounts, including the additional time  
 24 that consumers must spend to verify their identities as required by the Patriot Act, 31 U.S.C. §  
 25 5318(l), 31 C.F.R. § 103.121; (2) close existing accounts; (3) notify parties (*e.g.*, monthly billers)  
 26 to whom recurring payments are payable; (4) notify employer(s) and others to re-route direct  
 27 deposits; and (5) learn the new Bank's online banking system.

1           124. Consumers are aware that they also face a risk that mistakes or problems  
2 could occur when opening new accounts. For example, Banks may make mistakes establishing  
3 and processing new accounts, which must be resolved before consumers have access to their  
4 funds. Errors occur in the processing of automated payments to billers who fail to act promptly  
5 and accurately in processing new banking information from their customers.

6           125. Even consumers who take steps to avoid these switching costs subject  
7 themselves to risks. For example, consumers who leave insufficient funds in their existing  
8 accounts to clear outstanding checks and/or automated recurring payments are charged penalties  
9 by Banks and whoever presents the dishonored checks for payment. Thus, while it is possible for  
10 consumers to switch Banks, the costs of and risks associated with switching are significant, and  
11 generally exceed any amounts saved in the short term by avoiding supra-competitive Foreign  
12 ATM Fees.

13           126. In addition, consumers -- including Bank customers -- are often reluctant to  
14 switch from a product and/or service to which they are accustomed and about which they are  
15 knowledgeable, a phenomenon known as "cognitive lock-in" among behavioral economists. For  
16 example, customers who learn to use a Bank's online banking web site efficiently become  
17 "cognitively loyal" to that site, and will resist having to master a new one. Thus, even when  
18 consumers are dissatisfied with a particular Bank's services, real and perceived habits developed  
19 from repeat usage of those services significantly limit the likelihood that those consumers will  
20 switch Banks. Banks are well aware of cognitive switching costs and exploit them to retain  
21 customers.

22           127. Switching costs and cognitive lock-in increase the price differentials that  
23 consumers will tolerate before changing Banks. Because switching costs are high compared to  
24 the lower transaction price that consumers pay for each Foreign ATM Transaction by switching  
25 Banks, consumers are economically locked into their Bank. Cognitive lock-in has a similar  
26 effect. Star's fixed Interchange Fee can thus be set at a level that is both profitable to the Bank  
27 Defendants and supra-competitive, even if some of the Bank Defendants' customers are willing  
28 and able to overcome switching costs and cognitive lock-in effects to change Banks. Once locked

1 into their deposit accounts, class members are required to pay Star's fixed Interchange Fee as part  
2 of its Foreign ATM Fee.

3 128. ATM Networks other than Star are not substitutes for Foreign ATM  
4 Transactions routed over Star. When withdrawing cash at Foreign ATMs, consumers have no  
5 choice regarding the ATM Networks over which the transactions are routed. The Bank  
6 Defendants alone dictate that those transactions are routed over Star.

7 129. The existence of other ATM Networks does not discipline the level at  
8 which Star's Interchange Fees are fixed. Star does not compete with other ATM Networks as to  
9 Interchange Fees. As a result, and as a consequence of switching costs, cognitive lock-in and  
10 limited disclosure of Foreign ATM Fees, Star is able to sustain a small but significant, non-  
11 transitory increase in Interchange Fees without forfeiting Foreign ATM Transactions to other  
12 networks. Indeed, Star has for years maintained Interchange Fees at artificially stable and supra-  
13 competitive levels.

14 130. The Defendants have market power in the market for Foreign ATM  
15 Transactions routed over Star. Star's members are able to raise the price of a Foreign ATM  
16 Transaction to a supra-competitive level through fixed Interchange Fees.

17 131. The total price consumers pay for Foreign ATM Transactions routed over  
18 Star is comprised of Foreign ATM Fees (the marked-up fixed Interchange Fee), plus Surcharges.  
19 However, consumers are informed only of the level of the Surcharge at the time of the  
20 transaction. When consumers are informed of Surcharges, they have the option of cancelling  
21 their transactions and shopping for machines with better prices. In stark contrast, consumers are  
22 not informed about fixed Interchange Fees, or marked-up Foreign ATM Fees at the time of the  
23 transaction, and therefore do not have the option to cancel their transaction and shop for machines  
24 with better prices. Consumers are informed about Foreign ATM Fees only in monthly  
25 statements, well after their transaction dates. Consumers are more sensitive to information,  
26 including prices, when it is transparent. Accordingly, consumers are generally more sensitive to  
27 changes in Surcharges than changes in Foreign ATM Fees.  
28

1           132. Because consumers are more sensitive to changes in Surcharges than to  
2 changes in Foreign ATM Fees, relatively large increases in Foreign ATM Fees would reduce the  
3 demand for ATM transactions by a relatively small amount, while relatively small increases in  
4 Surcharges would decrease the demand for ATM transactions by a relatively large amount. As a  
5 result, Star's members have increased the prices of Foreign ATM Transactions, and, in the  
6 aggregate, increased their profits, through collusively set and imposed mandatory Interchange  
7 Fees. The effect has been to shift consumer payments from transparent Surcharges to opaque and  
8 hidden Foreign ATM Fees. Thus, Defendants have exercised market power by raising the total  
9 price of Foreign ATM Transactions to a supra-competitive level.

10           133. Defendants' fixed Interchange Fees are not subject to normal competitive  
11 pressures. Consumers cannot exert any downward pressure on Interchange Fees, and hence  
12 cannot exert any downward pressure on Foreign ATM Fees. At the time of their transactions,  
13 they have no freedom to choose the ATM Network over which the transaction is routed. They  
14 tend to be unaware that they are paying Interchange Fees or that Defendants have fixed the  
15 amounts of those fees. Consumers have no freedom to avoid paying fixed Interchange Fees.  
16 Absent providing consumers with the total cost (including the marked-up Interchange Fee) of  
17 Foreign ATM Transactions at the time of the transactions, consumers cannot make the most  
18 rational decisions which would lead to the most economically efficient outcome. Consumers  
19 therefore cannot and do not constrain the levels of Star's Interchange Fees.

20           134. During the Relevant Period, Defendants have also jointly controlled price,  
21 and thereby exercised market power, by fixing Star's Interchange Fees at supra-competitive levels  
22 without regard to costs.

23           135. Star's fixed Interchange Fees have never been based on natural market  
24 forces or the costs of providing cash to other Banks' customers. When the fees were originally  
25 fixed at \$.40 for on-premises and \$.60 for off-premises ATMs in 1984, they were set based on  
26 cost data and the Banks' limited understanding of difference in costs, if any, related to on- and  
27 off-premises machines. Star has never determined or had an independent party analyze the costs  
28 associated with Foreign ATM Transactions. When, in 1990, Star and its Bank members fixed

1 Interchange Fees at \$.45 for on-premises and \$.55 for off-premises ATMs, they did not do so  
2 based on any cost study. Cost has never been a consideration in the levels of Star's fixed  
3 Interchange Fees.

4 136. STAR's Interchange Fees have continued to be fixed at a price far above  
5 the costs of providing cash to other Banks' customer. As of 1993, at least one ATM Network  
6 estimated that cost to be approximately 25 cents per transaction. That cost has only decreased  
7 over time as the costs of technology – especially telecommunications costs – have declined  
8 rapidly.

9 137. Nevertheless, Star's fixed Interchange Fees remained static through 2002.  
10 In 2003, Star's fixed Interchange Fees were adjusted by a mere penny, to \$.46 for on-premises  
11 ATMs and \$.54 for off-premises ATMs. Cost was not a reason for this *de minimis* change. Star's  
12 fixed Interchange Fees have been set well above and without regard to costs.

13 138. Defendants' control over price is further evidenced by the significant  
14 increase in the fixed Interchange Fees charged on the former Honor and MAC networks. In  
15 approximately February 2000, Star's Board of Directors voted and agreed to fix and raise Honor's  
16 Interchange Fees from a flat \$.40 per transaction to Star's then prevailing rates of \$.45 for on-  
17 premises ATMs and \$.55 for off-premises ATMs effective December 2000. This price increase  
18 was unrelated to cost.

19 139. Similarly, in 2002, Interchange Fees on the former MAC network were  
20 fixed and raised significantly from a flat \$.38 to Star's then prevailing rates of \$.45 for on-  
21 premises ATMs and \$.55 for off-premises ATMs. This price increase was unrelated to costs.

22 140. Moreover, because consumers pay fixed Interchange Fees, no Bank  
23 Defendant or other Bank members of the former Honor or MAC ATM networks left Star because  
24 of these increases in Interchange Fees.

25 141. The structure of the banking/ATM Network industry encourages  
26 consolidation and discourages new entrants. Banks require high start-up costs (for example,  
27 capitalization, regulatory compliance, and brick-and-mortar branches) and have relatively low  
28 marginal costs. ATM Networks exhibit economies of density or economies of ubiquity within a

1 geographic area (that is, the more ubiquitous, the more valuable the network). This encourages  
 2 consolidation and inhibits new entrants, because a new entrant is at a substantial disadvantage to  
 3 an established, wide-spread network (such as Star). In fact, the market has significantly  
 4 consolidated, from 127 ATM networks in 1984, to 40 in 2002, to 25 in 2006.

5 142. The geographic dimension of both alleged relevant product markets is any  
 6 location in the United States where a consumer has been able to conduct a Foreign ATM  
 7 Transaction over Star during the Relevant Period.

8 143. For the purpose of forming and effectuating the aforesaid contract,  
 9 combination and conspiracy, the Defendants and their co-conspirators did those things which they  
 10 combined and conspired to do, including, among other things, fixing and maintaining Interchange  
 11 Fees.

12 **I. Star's Member Banks Have No Ability Or Incentive To Seek Redress For**  
 13 **Star's Fixed Interchange Fees**

14 144. There is no realistic possibility that any member Bank that both issues  
 15 ATM Cards and owns ATMs, which is the vast majority of members including all Bank  
 16 Defendants, would sue Star over fixed Interchange Fees, because they both pay and receive  
 17 Interchange Fees. The Bank Defendants also mark-up the Interchange Fees to compute Foreign  
 18 ATM Fees, which are a significant source of their revenue. Accordingly they benefit from fixed  
 19 Interchange Fees. They are also co-conspirators.<sup>1</sup>

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs pray for the following relief:

22 1. That the Court determine that each class should be certified under Rules  
 23 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure, and direct that reasonable notice of  
 24 this action, as provided by Federal Rule of Civil Procedure 23(c)(2), be given to the members of  
 25 the Damages Classes;

26 2. That the Court adjudge and decree that Defendants' actions violate Section  
 27 1 of the Sherman Act, 15 U.S.C. § 1;

28 <sup>1</sup> Pursuant to *Parrino v. FHP, Inc.*, 146 F.3d 699, 704 (9<sup>th</sup> Cir. 1998), Plaintiffs preserve all  
 appealable rights relating to dismissed claims and parties.

1                   3.       That the Court adjudge and decree that Plaintiffs and each member of the  
2 Damages Classes have sustained damages, and that the Court enter judgment in favor of Plaintiffs  
3 and each member of the Damages Classes and against Defendants, and each of them, for damages  
4 sustained;

5                   4.       That the Court enjoin Defendants from combining or conspiring to fix,  
6 raise, maintain or stabilize Interchange Fees, and from engaging in the wrongful practices alleged  
7 in this Complaint;

8                   5.       That the Court award Plaintiffs and other members of the Classes their  
9 costs of suit, including reasonable attorneys' fees, as provided by law; and

10                  6.       That the Court grant Plaintiffs and the other members of the Classes such  
11 other, further and different relief as the nature of the case may require or as may seem just and  
12 proper to this Court.

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14  
15 Dated: October 16, 2009

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26 Co-Lead Counsel for Plaintiffs  
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**DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues triable as of right by jury.

Dated: October 16, 2009

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